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November 30, 2007

Hon. Raymond J. Dearie
Chief Judge
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201
(served and filed via ECF)

Re: United States v. Antonio Marmorato
94 CR 1240

Dear Chief Judge Dearie:

Several weeks ago Ms. Mulqueen called me to inquire whether I was in possession of a final judgment in this matter as the District Court file does not contain one. (In 2005 the Court of Appeals issued a Crosby remand but there is no record of a new sentence.) She asked me to retrieve my file from storage and let her know if this case was final.

My file reflects that I inquired of the defendant immediately after the remand as to his desire to be re-sentenced. He was informed that he would have to make the request, and I would ask for a new sentence if he desired, but that there would be no new sentencing if he did not want one. I received no response of any sort.

With an excess of caution and perhaps a lack of wisdom, I reached out to the defendant again when Ms. Mulqueen made her inquiry. I expected (and wanted) an explicit rejection of the offer of the Court of Appeals.

Instead, the defendant, through his sister, has asked to be re-sentenced in accordance with the remand. He is now incarcerated in New Mexico and I suspect the re-sentencing is meant to accomplish a transfer to New York, making family contact easier.

But my suspicions are no more than that. The defendant respectfully requests reconsideration of his sentence pursuant to Crosby, as directed by the Court of Appeals in its order of March 7, 2005.

With kindest regards, and an apology for burdening Your Honor, I remain

Respectfully yours,

BARRY GENE RHODES

BGR:ck
cc: Roslynn Mauskoph, Esq.